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Addendum

Annex III

Draft financial regulations and rules

Discussion paper proposed by the Coordinator

Preamble and regulations 1 to 10

The Assembly of States Parties,

Noting that the Rome Statute of the International Criminal Court, article 113, provides that, except as otherwise specifically provided, all financial matters related to the Court and the meetings of the Assembly of States Parties, including its Bureau and subsidiary bodies, shall be governed by the Rome Statute and the Financial Regulations and Rules adopted by the Assembly of States Parties,

Adopts the following Financial Regulations for the International Criminal Court.

Regulation 1
Applicability

1.1 These regulations shall govern the financial administration of the International Criminal Court.

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1.2 For the purposes of these Regulations:

(a) "Assembly of States Parties" means the Assembly of States Parties to the Rome Statute of the International Criminal Court, adopted at Rome on 17 July 1998;

(b) "Committee on Budget and Finance" means the Committee established as such by the Assembly of States Parties;

(c) "Court" means the International Criminal Court;

(d) "Presidency" means the Presidency of the International Criminal Court;

(e) "Registrar" means the Registrar of the International Criminal Court;

(f) "Rome Statute" means the Rome Statute of the International Criminal Court, adopted at Rome on 17 July 1998;[1]

1.3 The Assembly of States Parties shall establish detailed financial rules and procedures in order to ensure effective financial administration and the exercise of economy.[2]

Regulation 2
The financial period

2.1 The financial period shall consist initially of one calendar year. The Assembly of States Parties shall keep under review the financial period.

Regulation 3
Programme and budget

3.1 The draft budget for each financial period shall be prepared by the Registrar in consultation with the other organs of the Court. The draft budget shall include funding for the expenses of the Assembly of States Parties, including its Bureau and subsidiary bodies.

3.2* The draft budget shall cover income and expenditures for the financial period to which they relate and shall be presented in United States dollars.

3.3 The draft budget shall be divided into parts, sections and, as appropriate, programme support. The budget narrative shall set out wherever possible concrete objectives, expected results and key performance indicators for the budget period. It shall be accompanied by such information, annexes and explanatory statements as may be requested by or on behalf of the Assembly of

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* This provision will be the subject of further discussion in the Working Group.

[1] This provision merits further consideration in the light of the proposal contained in document PCNICC/2000/WGFIRR/DP.27.

[2] The corresponding provision in the United Nations Financial Regulations is included in regulation 10.1 (see para. (a) thereof), which sets forth functions of the Secretary-General, since the United Nations Financial Rules are promulgated by the Secretary-General. Pursuant to article 113 of the Rome Statute, the Financial Rules of the Court are to be adopted by the Assembly of States Parties. Thus, this provision is included in financial regulation 1 of the Court.

States Parties, including a statement on the main changes in comparison with the budget of the previous financial period and such further annexes or statements as the Registrar may deem necessary and useful. The Registrar shall monitor achievement of objectives and service delivery during the budget period and report in the context of the next proposed budget on actual performance attained.

3.4* The Registrar shall submit the draft budget for the following financial period to the Committee on Budget and Finance before the end of February of the year preceding the financial period for examination. The Committee on Budget and Finance shall transmit the draft budget proposed by the Registrar to the [Presidency],[3] with its comments and recommendations.[4]

3.5* The [Presidency] shall consider and approve the draft budget for the following financial period. The proposed budget as approved by the [Presidency] shall be submitted to the Assembly of States Parties for consideration and adoption.[5]

3.6 Supplementary budget proposals may be submitted by the Registrar with respect to the current financial period if circumstances unforeseen at the time of adopting the budget make it necessary. In this case, the supplementary budget proposal shall be in a form consistent with the approved budget. The provisions of these Regulations shall be applicable to the proposed

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* This provision will be the subject of further discussion in the Working Group.

[3] In the United Nations Financial Regulations, the Secretary-General submits his proposed programme budget to the Advisory Committee on Administrative and Budgetary Questions (ACABQ). ACABQ examines and reports on the proposed budget to the General Assembly, which ultimately adopts the budget (see United Nations financial regulations 3.5 to 3.7). Under the Financial Regulations approved by the International Tribunal for the Law of the Sea, the Registrar submits the draft budget to the Committee on Budget and Finance, which transmits the draft budget to the "Tribunal", with its comments and recommendations. The "Tribunal" considers and approves the draft budget, which is then submitted to the Meeting of States Parties for adoption (see financial regulations 3.4 and 3.5 approved by the International Tribunal for the Law of the Sea). The present text of draft regulations 3.4 and 3.5 for the International Criminal Court follows the pattern of financial regulations 3.4 and 3.5 approved by the International Tribunal for the Law of the Sea. However, in the case of the International Criminal Court, the question arises as to where to allocate the functions that, in financial regulations 3.4 and 3.5 approved by the International Tribunal for the Law of the Sea, are allocated to the "Tribunal". In this connection, it may be noted that the International Tribunal for the Law of the Sea is composed of "a body of 21 independent members" (United Nations Convention on the Law of the Sea, annex VI, article 2(1)), and it is this "Tribunal" which performs the functions allocated to it in financial regulations 3.4 and 3.5. However, the International Criminal Court is composed of four organs: (a) the Presidency, (b) an Appeals Division, a Trial Division and a Pre-Trial Division, (c) the Office of the Prosecutor and (d) the Registry (Rome Statute, article 34). Thus, in the case of the International Criminal Court, it may be indefinite to allocate to the "Court" the functions which, in the case of the International Tribunal for the Law of the Sea, are allocated to the "Tribunal". It will have to be determined which organ of the Court should exercise these functions. One possibility is that the functions be exercised by the Presidency. Thus, for the purposes of the present text, the word "Presidency" has been placed within square brackets, pending a decision on the question.

[4] The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.18).

[5] See footnote 3 above. The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

supplementary budget. Decisions of the Assembly of States Parties on the supplementary budget proposed by the Registrar shall be based on the recommendations of the Committee on Budget and Finance.

3.7* The Registrar may enter into commitments for future financial periods, provided that such commitments:

(a) Are for activities which have been approved by the Assembly of States Parties and are expected to continue beyond the end of the current financial period; or

(b) Are authorized by specific decisions of the [Presidency][6] acting with the prior approval of the Assembly of States Parties.

Regulation 4
Appropriations

4.1* The appropriations adopted by the Assembly of States Parties shall constitute an authorization for the Registrar to incur obligations and make payments for the purposes of which the appropriations were adopted and up to the amounts adopted.

4.2 Appropriations shall be available for obligation during the financial period to which they relate.

4.3 Appropriations shall remain available for twelve months following the end of the financial period to which they relate to the extent that they are required to liquidate any outstanding legal obligations of the financial period. The balance of the appropriations remaining unobligated at the close of the financial period, after deducting therefrom any contributions from States Parties relating to that financial year which remain unpaid, shall form part of any cash surplus of the budget and shall be treated in accordance with regulation 4.4 bis.

4.4 At the end of the twelve-month period provided in regulation 4.3, the then remaining unspent balance of appropriations retained after deducting therefrom any contributions from States Parties relating to the financial period of the appropriations which remain unpaid shall be treated as a cash surplus as in regulation 4.3. Any obligations remaining a valid claim at that time shall be charged against current appropriations.

The provisional cash surplus for the financial period shall be determined by establishing the balance between credits (assessed contributions actually

* This provision will be the subject of further discussion in the Working Group.

[6] The corresponding provision of the United Nations Financial Regulations, regulation 3.10 (b), authorizes the Secretary-General to enter into commitments for future financial periods provided that such commitments are authorized by specific decisions of the General Assembly. Financial regulation 3.7 (b) approved by the International Tribunal for the Law of the Sea authorizes the Registrar to enter into such commitments provided that they are authorized by specific decisions of the "Tribunal" acting with the prior approval of the Meeting of States Parties. For reasons discussed in footnote 3, above, in the case of the International Criminal Court, it may be indefinite for such authority to be given simply by the "Court", acting with the prior approval of the Assembly of States Parties. Thus, for the purposes of the present text, the word "Presidency" has been placed with square brackets, pending a decision on to whom the reporting should be made.

received for the financial period and miscellaneous income received during the financial period) and charges (all disbursements against the appropriations for that financial period and provisions for unliquidated obligations for that financial period).

The cash surplus for the financial period shall be determined by crediting to the provisional cash surplus any arrears of prior periods' assessed contributions from States Parties received during this period and any savings from the provisions made for unliquidated obligations as mentioned above. Any remaining outstanding obligations shall be re-obligated against the appropriations of the current financial period.

4.4 bis Any cash surplus in the budget at the close of any financial period shall be apportioned among States Parties in proportion to the scale of assessments applicable to the financial period to which the surplus relates. As of 1 January following the year in which the audit of the accounts of the financial period is completed, the amount so apportioned to a State Party shall be surrendered to such State Party if its contribution for that financial period has been paid in full and shall be applied to liquidate, in whole or in part, first, any advance due to the Working Capital Fund; secondly, any arrears of assessed contributions; and thirdly, assessed contributions for the calendar year following the year in which the audit is completed.

While any cash surplus in the budget shall be apportioned among all States Parties, the amount so apportioned shall be surrendered only to those States Parties which have paid in full their contributions for that financial period. Amounts apportioned but not surrendered shall be retained by the Registrar until such time as the contribution for the relevant financial period is paid in full, at which time they shall be applied as set forth above.

4.5* No transfer between appropriation sections may be made without authorization by the Assembly of States Parties. However, the [Presidency] may, in exceptional circumstances, authorize such a transfer and shall report thereon to the Assembly of States Parties.[7]

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* This provision will be the subject of further discussion in the Working Group.

[7] A sentence analogous to the last sentence of regulation 4.5 does not appear in the corresponding provision of the United Nations Financial Regulations (regulation 4.5). It does appear in financial regulation 4.5 approved by the International Tribunal for the Law of the Sea. However, in that provision, the authority to authorize, in exceptional cases, a transfer between appropriation sections is allocated to the "Tribunal". For reasons discussed in footnote 3, above, in the case of the International Criminal Court, it may be indefinite for this authority to be allocated simply to the "Court". Thus, for the purposes of the present text, the word "Presidency" has been placed within square brackets, pending a decision on to whom the authority should be allocated. The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19). In addition, a proposal has been made to add a new regulation 4.6 to the Financial Regulation approved by the International Tribunal for the Law of the Sea (see SPLOS/CRP.19).

Regulation 5
Provision of funds

5.1* The funds of the Court shall include:[8]

(a) Assessed contributions made by States Parties in accordance with article 115, paragraph (a), of the Rome Statute;

(b) Funds provided by the United Nations in accordance with article 115, paragraph (b), of the Rome Statute;

(c) Voluntary contributions by Governments, international organizations, individuals, corporations and other entities, in accordance with article 116 of the Rome Statute;

(d) Such other funds to which the Court may become entitled or may receive.

5.2 The appropriations, subject to the adjustments effected in accordance with the provisions of regulation 5.3, shall be financed by contributions from States Parties in accordance with an agreed scale of assessment, as provided in article 117 of the Rome Statute. The scale shall be based on the United Nations regular budget scale of assessments adjusted to take into account the differences in membership between the United Nations and the Court. Pending the receipt of such contributions, the appropriations may be financed from the Working Capital Fund.[9]

5.3 The contributions of States Parties shall be assessed for a financial period on the basis of the appropriations approved by the Assembly of States Parties for that financial period. Adjustments to the assessments of States Parties shall be made in respect of:

(a) Any balance of the appropriations surrendered under regulation 4.4 bis;

(b) Contributions resulting from the assessment of new States Parties under the provisions of regulation 5.9.

5.4 After the Assembly of States Parties has reviewed and adopted the budget and determined the amount of the Working Capital Fund, the Registrar shall:[10]

(a) Transmit the relevant documents to the States Parties;

(b) Inform the States Parties of their commitments in respect of annual assessed contributions and advances to the Working Capital Fund;

(c) Request them to remit their contributions and advances.

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* This provision will be the subject of further discussion in the Working Group.

[8] A provision of this nature does not appear in the United Nations Financial Regulations. It does appear in the Financial Regulations approved by the International Tribunal for the Law of the Sea. The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.16).

[9] The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of proposals for amendment (see SPLOS/CRP.15, SPLOS/CRP.16 and SPLOS/CRP.19).

[10] The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

5.5 Assessed contributions and advances shall be considered as due and payable in full within thirty days of the receipt of the communication of the Registrar referred to in regulation 5.4 or as of the first day of the calendar year to which they relate, whichever is the later. As of 1 January of the following calendar year, the unpaid balance of such contributions and advances shall be considered to be one year in arrears.[11]

5.6* Annual contributions and advances to the Working Capital Fund shall be assessed and paid in United States dollars.

5.7 Payments made by a State Party shall be credited first to the Working Capital Fund and then to the contributions due, in the order in which the State Party was assessed.

5.8 The Registrar shall submit to each meeting of the Assembly of States Parties a report on the collection of contributions and advances to the Working Capital Fund.

5.9 New States Parties shall be required to make contributions for the year in which they become States Parties and to provide their proportion of the total advances to the Working Capital Fund at rates to be determined by the Assembly of States Parties.[12]

5.10* Contributions of entities other than a State Party [or the United Nations] to the expenses of the Court shall be treated as miscellaneous income.[13]

Regulation 6[14]
Funds

6.1* There shall be established a General Fund for the purpose of accounting for the expenditures of the Court. The contributions referred to in regulation 5.1 by States Parties and miscellaneous income and any advances made from the Working Capital Fund to finance expenditures shall be credited to the General Fund.

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* This provision will be the subject of further discussion in the Working Group.

[11] The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

[12] The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

[13] The corresponding provision of the United Nations Financial Regulations, regulation 5.9, differs, as it deals with situations particular to the United Nations. The words "or the United Nations" have been placed within square brackets pending consideration as to whether funds provided by the United Nations are to be treated as miscellaneous income. This provision should be consistent with regulation 7.1, below.

The United Nations Financial Regulations contain an additional regulation, regulation 5.10, which deals with borrowing for reimbursable seeding operations of the United Nations Habitat and Human Settlements Foundation. Such a provision presumably is not relevant to the International Criminal Court.

[14] With respect to draft regulations 6, 8, 9 and 11.3, it may be considered whether a relatively small secretariat would require as many funds and accounts as the United Nations itself. The use of interrelated subaccounts for banking and internal purposes might be considered.

6.2* There shall be established a Working Capital Fund in an amount and for purposes to be determined from time to time by the Assembly of States Parties. The Working Capital Fund shall be constituted by advances from States Parties. Advances shall be made in accordance with an agreed scale of assessment based upon the scale used for the regular budget. Advances shall be carried to the credit of States Parties which have made such advances.[15]

6.3 Advances made from the Working Capital Fund to finance budgetary appropriations shall be reimbursed to the Fund as soon as and to the extent that income is available for that purpose.

6.4* Except when such advances are recoverable from some other source, advances made from the Working Capital Fund for unforeseen and extraordinary expenses or other authorized purposes shall be reimbursed through the submission of supplementary budget proposals.[16]

6.5 Income derived from investments of the Working Capital Fund shall be credited to miscellaneous income.

6.6* Trust funds, reserve and special accounts may be established by the Registrar and shall be reported to the [Presidency].[17]

6.7* The purposes and limits of each trust fund, reserve and special account shall be clearly defined by the appropriate authority. Unless otherwise decided by the Assembly of States Parties, such funds and accounts shall be administered in accordance with these Regulations.[18]

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* This provision will be the subject of further discussion in the Working Group.

[15] The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of proposals for amendment (see SPLOS/CRP.15 and SPLOS/CRP.19).

[16] The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

[17] The corresponding provision of the United Nations Financial Regulations, regulation 6.6, provides that trust funds, reserve and special accounts established by the Secretary-General are to be reported to the Advisory Committee on Administrative and Budgetary Questions. Financial regulation 6.6 approved by the International Tribunal for the Law of the Sea provides that such accounts established by the Registrar are to be reported to the "Tribunal". For reasons discussed in footnote 3, above, in the case of the International Criminal Court, it may be indefinite for such reporting to be simply to the "Court". Thus, for the purposes of the present text, the word "Presidency" has been placed within square brackets, pending a decision on to whom the reporting should be made. The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

[18] The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

Regulation 7
Other income

7.1 All other income except:[19]

(a) Assessed contributions made by States Parties to the budget;

[(b)* Funds provided by the United Nations in accordance with article 115, paragraph (b), of the Rome Statute;][20]

(c)* Voluntary contributions made by States Parties, other States, international organizations, individuals, corporations and other entities, in accordance with article 116 of the Rome Statute;

(d) Direct refunds of expenditures made during the financial period;

(e)* Revenue derived from staff assessment,

shall be classed as miscellaneous income, for credit to the General Fund.

7.2* Voluntary contributions, gifts and donations, whether or not in cash, may be accepted by the Registrar, provided that the [Presidency][21] is satisfied that the purposes for which the contributions are made are consistent with the nature and functions of the Court. Acceptance of contributions which directly or indirectly involve additional financial liability for the Court shall require the consent of the Assembly of States Parties.[22]

7.3* Contributions accepted for purposes specified by the donors shall be treated as trust funds or special accounts.[23]

7.4* Contributions in respect of which no purpose is specified shall be treated as miscellaneous income and reported as "gifts" in the accounts of the financial period.

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* This provision will be the subject of further discussion in the Working Group.

[19] This provision should be consistent with regulation 5.10 above. The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

[20] This provision has been placed within square brackets pending consideration as to whether funds provided by the United Nations are to be treated as miscellaneous income.

[21] The corresponding financial regulation approved by the International Tribunal for the Law of the Sea (regulation 7.2) provides that the "Tribunal" must be satisfied that the purposes for which contributions are made are consistent with the nature and functions of the Tribunal. For reasons discussed in footnote 3, above, in the case of the International Criminal Court, it may be indefinite for this function to be allocated simply to the "Court". Thus, for the purposes of the present text, the word "Presidency" has been placed within square brackets, pending a decision on to whom the authority should be allocated.

[22] The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

[23] The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

Regulation 8[24]
Custody of funds

8.1 The Registrar shall designate the bank or banks in which the funds of the Court shall be kept.

Regulation 9[25]
Investment of funds

9.1 The Registrar may make short-term investments of moneys not needed for immediate requirements and shall periodically inform the Presidency and, through the Committee on Budget and Finance, the Assembly of States Parties of such investments.[26]

9.2 Income derived from investments shall be credited to miscellaneous income or as provided in the rules relating to each trust fund or special account.[27]

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[24] See footnote 14.

[25] See footnote 14. In addition, it may be considered whether it would be appropriate and cost-effective for a relatively small secretariat to acquire the investment expertise needed in order for the Registrar to effectively make short-term investments. It might be preferable to provide that "moneys not needed to meet immediate requirements may be placed in higher interest yielding fixed-term bank accounts".

[26] The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

[27] The United Nations Financial Regulations contain the following additional provisions, which are not included in the Financial Regulations approved by the International Tribunal for the Law of the Sea and, therefore, have not been included in the present draft text:

> "9.2 The Secretary-General may, after consultation with the Investments Committee, make long-term investments of moneys standing to the credit of trust funds, reserve and special accounts, except as may be otherwise provided by the appropriate authority in respect of each such fund or account and having regard to the particular requirements as to the liquidity of funds in each case.
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> "...
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> "9.4 Under rules established by the Secretary-General, loans may be made from the resources of the United Nations Habitat for Human Settlements Foundation, including those borrowed pursuant to regulation 5.10, in implementation of the approved programmes of the Foundation."

Such a provision would presumably not be relevant in the case of the International Criminal Court.

The corresponding provision of the Financial Regulations approved by the International Tribunal for the Law of the Sea is the subject of a proposal for amendment (see SPLOS/CRP.19).

Regulation 10
Internal control

10.1 The Registrar shall:[28]

(a) Cause all payments to be made on the basis of supporting vouchers and other documents which ensure that the services or goods have been received and that payments have not previously been made;

(b) Designate the officers who may receive moneys, incur obligations and make payments on behalf of the Court;

(c) Maintain an internal financial control which shall provide for effective current examination and/or review of financial transactions in order to ensure:

(i) The regularity of the receipt, custody and disposal of all funds and other financial resources of the Court;

(ii) The conformity of obligations and expenditures with the appropriations or other financial provisions voted by the Assembly of States Parties, or with the purposes and rules relating to trust funds and special accounts;

(iii) The economic use of the resources of the Court.

10.2 Obligations for the current financial period or commitments for current and future financial periods shall be incurred only after allotments or other appropriate authorizations have been made in writing under the authority of the Registrar.

10.3* The Registrar may make such ex gratia payments as he or she deems to be necessary in the interest of the Court, provided that the statement of such payments shall be submitted to the Assembly of States Parties with the accounts.

10.4* The Registrar may, after full investigation, authorize the writing-off of losses of cash, stores and other assets, provided that a statement of all such amounts written off shall be submitted to the Auditor with the accounts and reported to the Assembly of States Parties.

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* This provision will be the subject of further discussion in the Working Group.

[28] For reasons discussed in footnote 2, above, the substance of regulation 10.1 (a) approved by the International Tribunal for the Law of the Sea has, in the present draft text, been transposed to regulation 1.3.

Consideration might be given to specifying that the vouchers and other documents referred to in this regulation may be issued in electronic format.

10.5* Substantial purchases of equipment, supplies and other requirements as specified in the Financial Rules shall be by tender. Such tenders shall be invited by advertisement, except where the Registrar, with the approval of the Presidency, deems that, in the interests of the Court, a departure from the rule is desirable.[29]

[The discussion of draft regulations 11, 12, 13 and 14 as well as the annex containing additional terms of reference governing the International Criminal Court will proceed on the basis of document PCNICC/2000/WGFIRR/L.1 and related proposals.]

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* This provision will be the subject of further discussion in the Working Group.

[29] The corresponding provision of the United Nations Financial Regulations, regulation 10.5, does not restrict the requirement of tenders to "substantial purchases". That regulation provides: "Tenders for equipment, supplies and other requirements shall be invited by advertisement, except where the Secretary-General deems that, in the interests of the Organization, a departure from the rule is desirable". The wording of the draft provision in the present text reflects the wording of financial regulation 10.5 approved by the International Tribunal for the Law of the Sea.